IN THE SUPREME COURT

OF THE

UNITED STATES.

No. 237.

JOHN L. VAN REYNEGAN, ET. AL.

Plaintiffs in Error.

VS.

JAMES C. BOLTON,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

B. S. BROOKS,

Attorney.

No. 237.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

John L. Van Reynegom, Jonathan Bickerstaff, R. S. Brown, David Clingan, James Cummings, Peter Gardener, Louis Denos, Francisco Angonetti, Mart Tierney, Edward Wormouth and Victor Garnon,
Plaintiffs in Error,
vs.
James C. Bolton.

Statement of the Case.

The action was for the recovery of the possession of a tract of land, parcel of the Rancho Corte Madera del Presidio, which was granted to Juan Read by the Mexican Government. The complaint, in the usual form, in accordance with the practice in the courts of California (16 Cal., 220), was filed Oct. 30th, 1865. Plaintiffs in error filed separate answers, consisting of a general denial, and an averment that plaintiff had not been seized or possessed, within five years next before

the commencement of the action. This latter averment does not amount to a defense by our practice (33 Cal., 505). All these appeared by the same attorney. The case came on for trial August 25th, 1870, before the Circuit Judge, sitting without a jury. And after the cause had been submitted, to wit, on the 6th of February, 1871, upon stipulation of the attorneys for all parties, an order was made that an amended complaint be filed (fols. 54–5), which was accordingly done (fols. 56–60). The amendment of the complaint consisted of a change of the boundaries of the land described in the complaint. An error having occurred in description in the stipulation and amended complaint, upon a stipulation of the attorneys a new amended complaint was ordered to be and was filed Feb. 11, 1871 (Tr., fols. 61–66), and the action dismissed as to Philip Ray and Jose Albornos. The effect of the amendment was to reduce the limits of the land sued for. On the 25th of July, 1871, the Circuit Judge filed his finding of fact, which is a specific statement of the facts in regard to the plaintiff's title (the defendants did not claim to have any), (fols. 67–76). In this the boundaries of the tract which the plaintiff is entitled to recover is specified, and are the same as those in the amended complaint, and judgment was entered in accordance therewith (Tr., fols. 77–82), againstthe plaintiffs in error only. The only question presented to this Court is, whether this finding supports the judgment. There is no bill of exceptions. The adverse possession of the defendants was not in question. The only question was upon the plaintiff's title. The Court found as facts: that the Mexican Government granted the said rancho to Juan Read; that juridical possession was duly delivered, and that the land described in the amended complaint was within the grant, and within the juridical possession; was held by him till his death, and that the possession passed to his heirs, who con-

veyed to plaintiff; that the heirs presented their claim for confirmation, and it was confirmed by the Board and the District Court, and the land had not been finally surveyed. A survey had been made by the U. S. Surveyor-General, which limited the quantity to one square league, and excluded the land in controversy. The claimants objected to this survey and location, and proceedings thereon were pending and undetermined at the time of the trial. [Afterward said survey was set aside and a new survey ordered to be made, which should conform to to the juridical possession, and a new survey has been made, which includes this land; but this survey has not yet become final.]

Points and Authorities for Defendant in Error.

1. It has been the settled law of California for near a quarter of a century, that the grantee of a Mexican grant was required by the law of Mexico and the terms of his contract to take and hold the possession of the land described in his titulo, even when the grant was one of specific quantity within exterior boundaries containing a larger quantity, and that consequently he could protect his possession against intruders without title. (Cornwall *vs.* Culver, 16 Cal., 423; Riley *vs.* Heisch, 18 Cal., 198; Mahoney *vs.* Van Winkle, 21 Cal., 552, 18 Cal., 589, 16 Cal., 423, 29 Cal., 569.) It has also become the settled law of California that prior possession gives a right of action to recover the possession against an intruder without title, even where title may be shown to exist in another. Beguette *vs.* Caulfield, 4 Cal., 278; McKee *vs.* Greene, 31 Cal., 418; Ayres *vs.* Bensley, 32 Cal., 620.

2. Defendants could claim no rights as pre-emptioners,

because the land being within the exterior limits of a Mexican grant, were exempted from pre-emption.

Mahoney *vs.* Van Winkle, 21 Cal., 552.

3. The title which passed by a Mexican grant was a legal title.

Ferris *vs.* Coover, 10 Cal., 589.

4. By the delivery of juridical possession the title became absolute and perfect to the land within the limits of the grant and of the juridical possession.

Seale *vs.* Ford, 29 Cal., 104.

5. If, as the plaintiffs in error contend, the grant were one of quantity within limits containing a larger area (which we deny), the plaintiffs still would be entitled to recover.

"Such grants vest in the grantee the right to the possession of the entire tract until, by an official measurement and survey, it has been determined that a surplus exists, and limits of the specific quantity granted are established."

"The grantee cannot in such case himself make the measurement and segregation, but must await the action of the government. He is, therefore, directly interested, until the official segregation, to protect the entire tract from waste and injury, and improve it; and until then, third persons cannot question his right to the possession of the whole."

"Until the official segregation of the specific quantity granted, the entire tract within the exterior boundaries is exempted from pre-emption and settlement by the legislation of Congress."

"A confirmee of a Mexican grant, after a decree confirming to him a specified quantity within exterior limits fixed by the grant embracing more than the quantity confirmed, may maintain until an official segregation is made ejectment for any portion of the land embraced within the exterior limits against one in possession claiming to be a pre-emptioner, under the laws of the United States."

Mahoney *vs.* Van Winkle, 21 Cal., 552.
S. P., 33 Cal., 102; 24 Cal., 268; 24 Cal., 569.

But we claim that the grant in this case was one not of quantity, but of a tract by specific boundaries. The finding is "that in the year 1834 the Mexican government, by Governor Jose Figueroa, granted to one Juan Reid *a tract of land called Corte Madera del Presidio, as far as the Point of Tiburon, bounding with the Mission of San Rafael and the port of San Francisco.*" It is true that it is stated in the grant that those limits contain "one square league, a little more or less," but it is added, "as explained by the map attached to the expediente."

There can be no question that such a description in an American deed would convey the whole tract, and not as plaintiffs in error contend—a quantity only—and no reason is given why a different rule should be applied to a Mexican grant.

U. S. *vs.* Pacheco, 22 How., 225.
U. S. *vs.* Estudillo, 1 Hoffman, 204.
U. S. *vs.* D'Aguirre, 1 Wall., 311.
Leese *vs.* Clark, 18 Cal., 535.

But however that might be, the delivery of juridical possession by the proper judicial authority, of the

entire tract, made the title of the grantee perfect and absolute to the whole tract.

Minturn *vs.* Brower, 24 Cal., 644.
Estrada *vs.* Murphy, 19 Cal., 248.
Ward *vs.* Mulford, 32 Cal., 365.
Natoma W. & M'g Co. *vs.* Clarkin, 14 Cal., 544.
Waterman *vs.* Smith, 13 Cal., 373.
Teschmaker *vs.* Thompson, 18 Cal., 11.
Riley *vs.* Heisch, 18 Cal., 198.
Leese *vs.* Clark, 18 Cal., 535.
Moore *vs.* Wilkinson, 13 Cal., 478.
Clark *vs.* Lockwood, 21 Cal., 220.
Steinbach *vs.* Moore, 30 Cal., 498.
DeArguello *vs.* Greer, 26 Cal., 615.

Judge Hoffman declared this to be one of the few cases in California where every requisite of the law had been complied with, and that the decree of the Board of Land Commissioners should be affirmed.

1 Hoffman Rep., 74.

The transfer of the sovereignty of California from Mexico to the United States did not affect the right of the inhabitants to their land which they had acquired from Mexico or Spain before such transfer.

U. S. *vs.* Moreno, 1 Wall., 400.
Ward *vs.* Mulford, 32 Cal., 365.
U. S. *vs.* Sutherland, 19 How., 363.
Beard *vs.* Federy, 3 Wall., 478–491.

Whether the land was within the grant and juridical possession, was a question of fact to be determined by the jury, or the judge sitting without a jury.

Ferris *vs.* Coover, 10 Cal., 589.

Plaintiffs in error's second point is stated to be—were they in unlawful possession?

If the survey and location had become final, as intimated at page 5 of the brief of plaintiffs in error, there would be some ground for his argument; but to continue his quotation from the transcript at page 18:

"But said survey was contested by the said confirmees, and the contest was still undetermined at the time of the commencement of this action, and at the time of the trial thereof the said contest was still pending before the proper officer of the United States on appeal, and the survey and location had not then, and has not yet, become final."

The authorities cited show that they were in unlawful possession. So far as those proceedings are concerned, we have prosecuted one appeal with success.

The position that the land is outside of the grant is answered by the finding that it is within the grant.

That our right of action does not arise until after final approval of the survey is answered by the authorities already cited. Miserable would have been the condition of those whom the Government, by the treaty with Mexico, bound itself to protect, if such opinions had prevailed. Fortunately, the courts of California were more just than the squatters.

As to the proceedings before the Surveyor-General and the Land Department, they are of no effect until they are concluded.

It may perhaps occur to the Court, or your honors may suspect that the plaintiffs in error have tried to make use of a brief made by a lawyer, and have not always understood its meaning, so that very frequent typographical errors have occurred. These the Court will without difficulty correct.

Sometimes the meaning is obscure, as in their argument with respect to the Statute of Limitations. Of course the proposition (page 9), that a party ousted

from his own land can have no right of action until the Statute of Limitations begins to run, is absurd. This is not the law, and could not be made so.

The explanation of the point which plaintiffs in error endeavor to make is this:

In 1850 a statute of limitations was passed, giving five years to bring action for the recovery of land. In 1855, just before the law expired, it was amended or repealed, and a new section passed, which excepted from its provisions titles derived from Mexico or Spain, in which case the time ran from the date of final confirmation.

April 18, 1863, this was repealed, and the original section re-enacted, which gave five years from the date of that Act to bring suit.

Within the five years, to wit, October 30, 1865, this action was brought. (Tr. fol. 5.)

This would be sufficient to answer this point. But after the passage of this Act, the Supreme Court of California, following this Court in divers cases, decided that this statute could not run while the title was in the United States, and the patentee could bring his action within five years after the issuance of the patent, this law to the contrary notwithstanding.

Then came the case of Aurrecoechea *et al. vs.* Hinckley, cited by plaintiffs in error. The plaintiff in that case had no patent, and he had not brought his suit within the five years after the passage of the Act of April, 1863, and therefore he could not succeed. Having waited so long, he must wait now till he gets his patent.

The Court will readily see that nothing in that case decided touches this case.

We agree with the plaintiffs in error (Brief, page 12) that the finding of the Court, that the juridical possession embraced 1500 acres more than one league,

is of no effect, because it is an immaterial fact not in issue in this case, and no fact alleged follows as a legal conclusion therefrom.

The finding of a fact not alleged serves no useful purpose. The material fact was that the lands in controversy were within the grant and juridical possession.

The statements made on pages 12 and 13, outside of the record, we deny entirely. It is a total misrepresentation of facts, wholly immaterial in this case; and being so wholly immaterial, and this not being the time nor place to discuss the facts, we pass them by with this remark.

B. S. Brooks,
For def't in error.

No. 237.

IN THE

United States Supreme Court.

JOHN L. VON REYNEGOM ET AL.,
Plaintiffs in Error,
vs.
JAMES C. BOLTON.

In Error to the District Court of the U. S. for the District of California.

Reply to Brief of Defendant in Error.

SAN RAFAEL.
PRINTED AT THE OFFICE OF THE MARIN COUNTY JOURNAL.
1877.

No. 237.

IN THE

United States Supreme Court.

JOHN L. VAN REYNEGOM ET AL.,
Plaintiffs in Error,
vs.
JAMES C. BOLTON.

Reply to Brief of Defendant in Error.

The counsel for defendant in error lays great stress on the validity of the grant, and the greater portion of his brief is taken up with the citation of authorities on that point, which it is simply a waste of time to examine, because there is no issue raised on that point. We said in our opening brief that the title was perfect, and we claimed it in the language of the Court, "*ordered, adjudged and decreed that the claim of the appellees is a good and valid claim, and that the claim be, and the*

same is hereby confirmed to the extent and quantity of one square league, it being the same land described in the grant, and of which the possession was proved to have been long enjoyed."

Those lands, so clearly described, are sacred to the confirmees. The boundaries and quantity are identically the same, no more, no less, no other place.

Such is our position in this case, and not, as the opposite counsel says of us, quantity only. Whether the land in controversy was within the boundaries of the grant and juridical possession, was a question of fact, to be determined by the proper government officials, and which has been determined, by the judicial construction of the grant in juridical possession, by the decree of final confirmation, and the official segregation of the U. S. Surveyor General, and the affirmation of the Commissioner of the General Land Office, all concurring in a complete corresponding chain of title to the boundaries of the grant, which excluded the lands in controversy.

Such was the antecedent history of this case, up to the commencement and judgment in this action.

Record, folio 71. "A survey has been made and approved by the Surveyor General * * * said survey, so made, excluded the land described in the complaint in this action."

At the conclusion of the opposite counsel's statement of the case, page 3 of his brief, he says: "After said survey was set aside, and a new survey ordered to be made, which should conform to the juridical possession, and a new survey has been made which includes this land, but

this survey has not yet become final." This is outside of the record, and is a total misrepresentation of facts; and in answer we will only give the decision at length, which will show your honors the precise position that survey was in when judgment was rendered against plaintiffs in error:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 6, 1871.

J. R. HARDENBURGH,
U. S. Surveyor General, San Francisco, Cal.:

SIR: This office has carefully examined the case of the survey of rancho "Corte de Madera del Presidio," heirs of John Read confirmees.

It is deemed unnecessary to recite *in extenso* the initial proceedings under the Mexican government, and the subsequent action of the board of land commissioners and of the judiciary upon *title* and *survey*, as this has been done at sufficient length in the letter from this office of 11th March, 1868, to the surveyor general, and his report of 26th February, 1870.

It is proper, however, to state briefly:

1st. That Read's application, dated 4th of September, 1834, to the Mexican government was for the place called Corte de Madera del Presidio, as shown by the sketch or plan he presented. (Record of Evidence, vol. 13, p. 218.)

2d. The governor passed the petition to the alcalde for report, among other things as to the extent of the tract petitioned for. (Record of Evidence, vol. 3, p. 223.)

3d. David Spence, Juan Malarin, and Guillermo E. Hartnell were examined on oath by the Mexican authorities in reference to the points of inquiry by the governor, and all designated the tract as about a league long and about half a league wide.

4th. The grant, dated 2d October, 1834, mentions the land granted as "*one square leayue*, a little more or less, as shown on the map which goes with the *espediente*," and directs "that the magistrate who may give the possession will cause it to be measured in conformity with the order to mark out the boundaries, *leaving the surplus*

which may result to the nation for its convenient uses." (Rec. Ev., vol. 13, p. 223.]

The claimants in this case, who apply for extension of survey beyond the quantity of one square league, contend that the mention of that quantity in the original proceedings under the Mexican government, and subsequent proceedings by the board and courts, is merely a conjectural estimate, and not controlling, but that, on the other hand, the *boundaries* mentioned are controlling.

On this point the U. S. Supreme Court, in the case of Yontz vs. United States, [23 Howard p. 497,] held that "if it be true that the boundaries are conclusively defined in the grant, then no surplus could be thrown off by the survey. But if two" [one league in this case] leagues are to be surveyed within larger limits, then the clause "*reserving the surplus which may remain to the nation for its convenient uses*" is consistent.

5th. The alcalde, Francisco de Haro, who gave juridical possession, is particular to state that "the square league of land which the rancho of Corte de Madera contains forms a square of twenty thousand Castilian varas; * * "regulated by said measure"—meaning the measurement made when juridical possession was given—and the record shows that the unusually specific certificate of the alcalde was specially asked for by the claimant Reed. [Record of Evidence, v. 13, p 229.]

6th. The U. S. District Court, on 14th January, 1856, decreed that the decision of the board of land commissioners be "in all things affirmed," and further decreed that the said claim be "confirmed to the extent and quantity of one square league."

The counsel for the ranch claimants contend that the terms in the decree of confirmation by court, "the said decision" [of the board] "be, and the same is hereby, in all things affirmed," are conclusive, as compelling a survey to include all the land within the limits of juridical measurement, and that the terms "to the extent and quantity of one square league" in said judicial decree are not to be regarded as a limitation to that quantity in the absence of the further terms of limitation "and no more," sometimes found in the decrees of court.

This office fails to see how a decree for "one square

league" would be more specific if the terms used were "one square league and no more," as a square league represents a determinate number of acres.

7th. A survey was made in October, 1858, by R. C. Mathewson, and approved September 19, 1859, by Surveyor General J. W. Mandeville which embraces 4,460-.24 acres, or 21.56 acres in excess of one square league.

8th. This survey was brought before the U. S. District Court upon exceptions thereto by the claimants, and said Court, supposing it had jurisdiction, overruled the exceptions, and confirmed the survey September 28, 1865.

This certainly shows what was the judicial interpretation of the decree of Court confirming title in respect both to *extent* and *location*.

It is true that the same Court afterward, October 16, 1865, set aside the aforesaid order approving survey, for the reason that said order was "entered under misapprehension."

The Surveyor General, in his report of 26th February, 1870, gives as the reason for the last-mentioned action of the Court "the want of jurisdiction."

The resident counsel for claimants, Messrs. Britton & Gray, allege that the reason stated by the Surveyor General is erroneous, and that the approval of survey was not set aside for "want of jurisdiction in the Court," but in view of the fact that the U. S. Supreme Court in the case of the United States vs. Sepulveda, (I. Wallace, p. 104,) ruled that surveys of this class did not come within the jurisdiction of the U. S. District Court, and in the absence of any reason being given by the Court itself other than "misapprehension," I am inclined to believe the reason assigned by the Surveyor General was the correct one.

When the survey was before the Court, upon exceptions thereto, the arguments now produced here were doubtless urged there, so that there would scarcely have been misapprehension of the *facts* in the case.

The survey is before us under the act of 1st July, 1864, requiring approval by the Commissioner of the General Land-Office to become final; and after a very careful examination of the whole matter, this office is of the opinion, and so decides, that the confirmatory judicial decree

limits the area to *one square* league, and that the survey executed by R. C. Mathewson, deputy surveyor, in October, 1858, and approved by the Surveyor General September 19, 1859, should be approved as the final and correct survey of the rancho in question, the Surveyor General's decision of 26th February, 1870, in these respects being affirmed. You will notify all parties interested of this decision, and allow thirty days from service of notice for appeal to the Secretary of the Interior, after which you will report the result; and if appeal be taken within that period, you will promptly, on its expiration, forward to this office all papers that may be filed with you for transmission to this Department.

In the meantime you will please acknowledge the receipt of this.

Very respectfully, your obedient servant,

WILL DRUMMOND,
Commissioner.

The second point of counsel is that the defendant could claim no rights as pre-emptor because the land was within the exterior limits of a Mexican grant.

This assertion is answered by the decision just cited, which shows plainly that the land in controversy is not a part of the grant. We deny that the ranch has more than one right boundary, or ever had. The idea is absurd that the rancho has one boundary for title and another for possession.

Again, we deny that we have a right, under the law, to question the validity of the grant or the boundaries thereof. In this proceeding, the law does not recognize such a novel way to establish the boundaries of a Mexican grant and to trample down the act of the executive department. The grantees are entitled to the boundaries of the grant as designated by the proper government official. They have no right to intrude over said line upon

their neighbor, nor their neighbor upon them—the Constitution will protect each alike.

Rights of Pre-emptors:

Vol. 10, U. S. Statutes at Large, page 244, chapter CXLIII: "Be it further enacted, that any settler who has settled, or may hereafter settle, on lands heretofore reserved on account of claims under French, or Spanish, or other grants which have been or shall be hereafter declared by * * * United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act and the act of September 4, 1841 * * * to appropriate the public lands and to grant pre-emption rights thereon. This principle has been established in the General Land Office: 'a qualified party may settle as a pre-emptor on unsurveyed land, and when it is surveyed, he may file his declaratory statement." June 20, 1871.

The land in controversy is public land so far as the decision of the proper government officials has affirmed and so far as we have a right to inquire into them; for we are estopped by their proceedings, and are bound by them under the law.

All questions are settled by the decisions made or the acts done by the proper officers, and their adjudications are that the possessions of the grantee did not embrace the land in controversy. On this principle of law the opposite counsel agrees with us. In his brief, page 6, he says: "*Whether the land was within the grant and possession was a question of fact, to be determined by the proper officers or judge.*"

This concession brings us to the main question, Can the acts of these officials be attacked collaterally? We say it is a settled principle of law that judicial decrees cannot be attacked collaterally. Let us see if the court below did attack the actions or decrees of those august tribunals collaterally. Record, page 17, folio 70: "*that the lands embraced within the external boundaries of said grant, and within the boundaries of said juridical possession is some fifteen hundred acres more than one square league.*"

Does not this plainly show an attack, both as to quantity and boundaries?

In our opening brief we illustrated on actual facts, in order to show the real effect of such a model way to establish the boundaries of grants, for which the opposite counsel reprimanded us—perhaps correctly—but it was not done for the purpose imputed by him; it was only to illustrate the evil effects such proceedings would have.

Suppose this judgment be affirmed, what would be the precedent? Would it not establish a rule of law that would be unkown to the rules and regulations of the government of the United States in establishing the boundaries of grants of land, and open the road to picked bodies of witnesses, as in the Limantour case, and the bringing of like suits against John Doe for 1,000 acres, Richard Roe 2,000 acres, Peter Blue 500 acres, and so on?

Counsel says the only question is upon plaintiff's title. Let us join issue on this question, and then we ask, what are the rules and regulations established by Congress in regard to Spanish grants, both as to title and boundaries? We only ask to be governed by those laws and regulations, as we have heretofore always acquiesced in them. The court below says the defendants were outside of the land confirmed and segregated by the U. S. officials, but are within the grant and juridical possession. Upon this question we come before your honors for our redress, and to know by what tribunal we are to be governed, and whether a decree can be attacked collaterally in this way.

The counsel says: "*It has become a settled law of California that prior possession gives a right.*" We concur.

The court below says that the defendant therein was in the peaceful, quiet possession, and had erected valuable improvements thereon, for more than three years before the commencement of this action—how much longer he does not say—[as a matter of fact it was more than ten years]. Again, the court below says that the grantee had possession only some time prior to 1852. This action was filed 1865. The decree of final confirmation, and the U. S. official segregation say that it was no part of the possession.

Under these circumstances we submit the case to your honors.

1st. How much land is confirmed by the decree of final confirmation, according to the record of this action?

2d. Have the parties a right to question the validity of the grant, or the extent of the boundaries thereof, further

than the segregation by the proper officers of the United States?

3d. Has the Court jurisdiction over the subject matter further than to protect the acts of the proper U. S. officers in their proceedings?

JOHN L. VAN REYNEGOM,
JONATHAN BICKERSTAFF,
R. S. BROWN,
DAVID CLINGAN,
JAMES CUMMINGS,
PETER GARDNER,
LOUIS DENOS,
FRANCISCO AUGENETTI,
MART. TIERNEY,
EDWARD WARMOUTH, AND
VICTOR GARNON,
Plaintiffs in Error.